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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,561	11/16/2000	Gregory Ashton	AA315X/KL	6013
27752 7590 02/12/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/700,561

Applicant(s)

ASHTON ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 4, 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

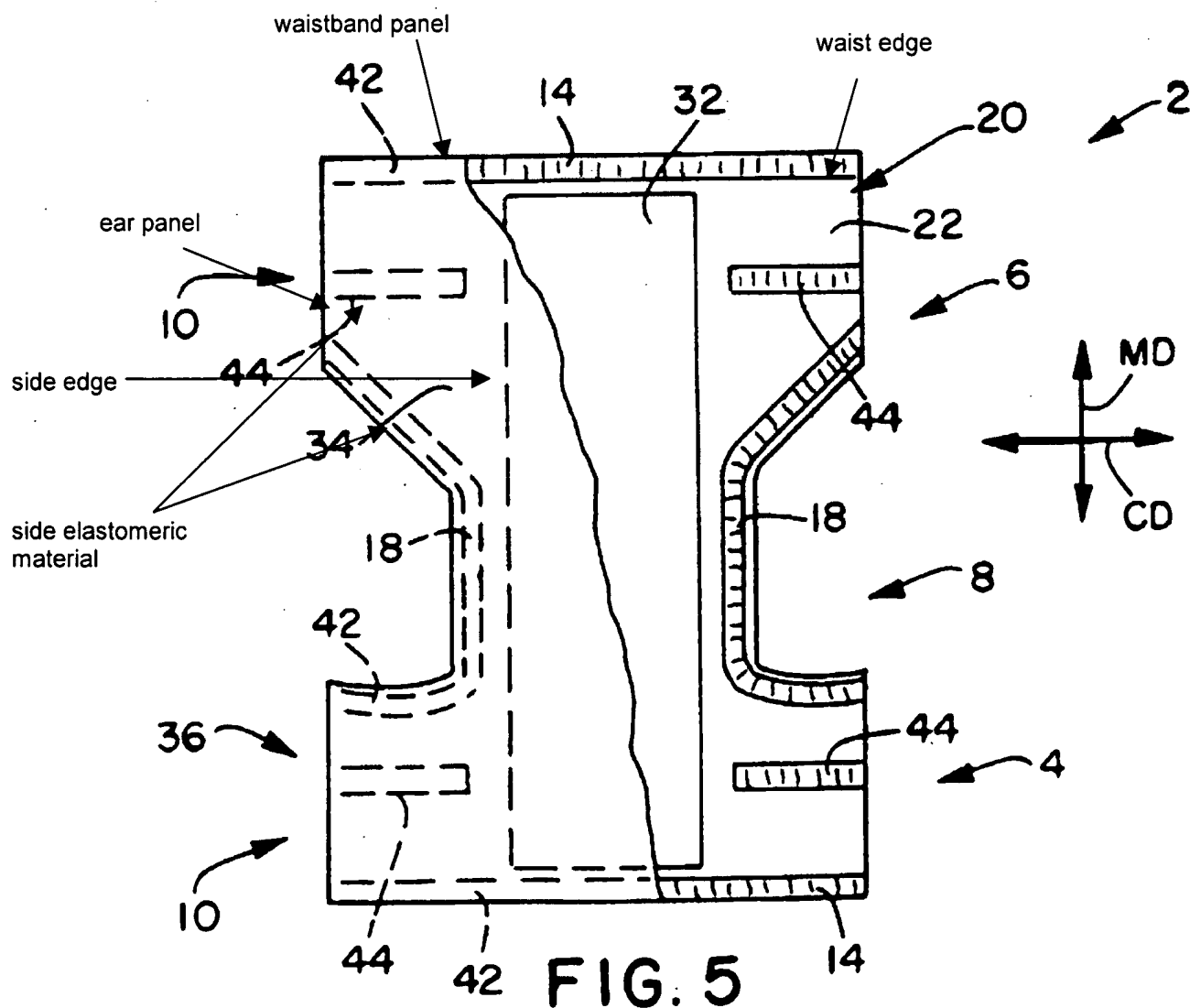
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 – 5 and 7 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Gompel et al. (EP 0 547 497 A2).

With respect to claim 1, Van Gompel et al. (hereinafter "Van Gompel") discloses a disposable garment having a front region, a back region, a crotch region between the front region and the back region (figure 5), the disposable garment comprising a chassis having a topsheet (34), a backsheet joined with the topsheet (20), and an absorbent core (32) interposed between the topsheet and the backsheet (figure 5), the chassis having a central panel having a waist edge and side edges, an ear panel having a waist



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a waist elastomeric material joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband in the front region and the back region (col. 5, line 57 to col. 6, line 2), a side elastomeric material joined to the ear panel so as to form extensible ears (44), wherein the side elastomeric material is disposed over substantially all of the ear panel to provide extensibility extending from said leg opening edge to said waist edge, and wherein the side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap each other (figure 5) and seams joining each ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature as set forth in figures 1 – 3.

As to claim 4, Van Gompel discloses a disposable garment wherein the extensible ear is formed from a “zero strain” stretch laminate through the incorporation of US 4,940,464 in col. 9, lines 33 – 39. US 4,940,464 (Van Gompel et al.) teach the use of “zero strain” stretch laminates in col. 4, line 31 to col. 5, line 32.

With respect to claim 5, Van Gompel discloses a disposable garment wherein the waist elastomeric materials comprise two separate elements, one of which is joined to the waistband panel in the front region, the other of which is joined to the waistband panel in the back region (figure 6), wherein the two elements are connected to each other at the seams as set forth in figures 1 – 3.

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As to claim 7, Van Gompel discloses a backsheet comprising an inner barrier film and a nonwoven outer cover, wherein the nonwoven outer cover is superposed outside the inner barrier film as set forth in col. 4, lines 38 – 57.

With reference to claim 8, Van Gompel discloses a garment wherein the extensible waistband comprises an extended portion of the outer cover and the waist elastomeric material as set forth in col. 8, lines 36 – 41.

With respect to claim 9, Van Gompel discloses that the extensible ear comprises an extended portion of the outer cover and the side elastomeric material as set forth in col. 8, lines 42 – 54.

As to claim 10, Van Gompel discloses that the waist elastomeric material is superposed inside an innermost surface of the garment as set forth in col. 8, lines 36 – 41.

### ***Response to Arguments***

Applicant's arguments filed January 4, 2007 have been fully considered but they are not persuasive.

With respect to the applicant's amendment to claim 1 which now requires a first and second lateral dimension with the second lateral dimension exceeding the first lateral dimension, the examiner maintains the current rejection and refers to claim 5. The examiner contends that any dimension or portion thereof extending in the lateral direction along what is considered as the ear panel may be considered the ear panel waist edge and any dimension or portion thereof extending in the lateral direction along what is considered to be the ear panel leg opening edge will meet the claimed

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limitations. The examiner considers the second lateral dimension to be that portion of the ear panel leg opening edge that exceeds the ear panel waist edge.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., page 7, last paragraph to page 8, first paragraph of Remarks filed January 4, 2007) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michele Kidwell  
Primary Examiner  
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